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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Rulemaking to Amend Part 1 and
Part 21 of the Commission's Rules to
Redesignate the 27.5-29.5 GHz Band and
to Establish Rules and Policies for
Local Multipoint Distribution Service

CC Docket No. 92-297

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYREPLY COMMENTS OF VIDEO/PHONE SYSTEMS, INC.FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Video/Phone Systems, Inc. ("Video/Phone"), by its attorneys,
hereby submits its reply to comments on the Commission's proposal
to utilize negotiated rulemaking ("NRM") procedures in the above-
captioned Local Multipoint Distribution Service ("LMDS")
rulemaking.^{1/} By the NRM Notice, the Commission proposes to
employ the NRM process to develop viable solutions to outstanding
technical issues in the LMDS rulemaking relating to co-primary
sharing of the 27.5 - 29.5 GHz band (the "28 GHz band") between
the LMDS and the Fixed Satellite Service ("FSS"). The parties
commenting on the NRM Notice unanimously support the Commission's
proposal to utilize NRM procedures in the LMDS rulemaking, and
thereby validate the Commission's finding that all applicable
statutory threshold criteria for establishment of the LMDS NRM
Committee have been met.

Video/Phone is pleased with the unanimous endorsement of the
Commission's LMDS NRM proposal. Video/Phone is compelled,

^{1/} See FCC Public Notice, CC Docket No. 92-297, Mimeo No. 41726
(released February 11, 1994) 59 Fed Reg 7961 (February 17, 1994)
(the "NRM Notice").

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however, to respond to certain recommendations advanced by some of the commenting parties that, if adopted by the Commission, would unnecessarily complicate the work of the LMDS NRM Committee, and could impede or totally preclude a successful outcome of the LMDS NRM process. As set forth in greater detail below, the Commission should act expeditiously to establish the LMDS NRM Committee, and should disregard attempts to expand the terms of reference of the Committee beyond its appropriately defined mandate.

I. Background

As demonstrated fully in Video/Phone's initial comments addressing the NRM Notice, Video/Phone maintains that there is a sound technical and economic foundation for a consensus agreement among the parties to the LMDS rulemaking that will yield a viable service rule structure proposal to facilitate co-primary LMDS/FSS sharing in the 28 GHz band.^{2/} Video/Phone is prepared to work with all members of the LMDS NRM Committee to finalize a mutually agreed upon service rule structure for co-primary LMDS/FSS operations in the 28 GHz band. Video/Phone believes that a co-primary LMDS/FSS service rule structure would be the most desirable outcome of the LMDS NRM process because it would result

^{2/} See Comments of Video/Phone Systems, Inc., CC Docket No. 92-297 (filed March 21, 1994).

in the earliest possible deployment of both LMDS and FSS systems, leading to the concomitant creation of numerous jobs and the availability of a wide range of new services to the public.

II. The Commission Should Expedite Establishment of the LMDS Negotiated Rulemaking Committee

Parties commenting on the NRM Notice represent a broad cross-section of LMDS developers and equipment manufacturers, pending 28 GHz FSS applicants and service providers, and members of the potential 28 GHz LMDS and FSS user community. The NRM Notice commenting parties unanimously support establishment of the LMDS NRM Committee. This unanimous endorsement unambiguously validates the Commission's finding that all applicable statutory threshold criteria have been met and demonstrates that establishment of the LMDS NRM Committee is in the public interest.^{3/} Given the ubiquitous support expressed by the NRM Notice commentators, Video/Phone urges the Commission to act expeditiously to implement its proposal to establish the LMDS NRM Committee.

^{3/} See NRM Notice at para. 5.

III. The LMDS Negotiated Rulemaking Committee's Mandate Should Not Be Expanded

In supporting the Commission's proposed establishment of the LMDS NRM Committee, commentators indicating an intention to participate in the LMDS NRM proceeding express a strong willingness to negotiate in good faith to resolve the outstanding technical issues relating to co-primary LMDS/FSS sharing of the 28 GHz band. Commentors also appear to be generally optimistic with regards to the potential for positive outcomes resulting from the LMDS NRM process. Based on its review of the various submissions regarding the LMDS NRM Notice and its ongoing contacts with other parties to the proceeding, Video/Phone remains confident that the LMDS NRM process will result in the formulation of a viable regulatory framework for co-primary LMDS/FSS sharing in the 28 GHz band. This, in turn, will allow the collective benefits of proposed 28 GHz LMDS and FSS systems, including new services and employment opportunities, to be brought to the public in the most expeditious fashion possible.

Video/Phone is compelled, however, to respond to certain recommendations advanced by a limited number of the commenting parties, that, if adopted by the Commission, would divert the focus and unnecessarily complicate the work of the LMDS NRM Committee, and could impede or totally preclude a successful outcome of the LMDS NRM process. Specifically, Video/Phone is

concerned by proposals to expand the scope of the LMDS NRM committee's mandate to include the consideration of matters that are wholly unrelated to developing a regulatory framework for co-primary LMDS/FSS sharing of the 28 GHz band. These proposals take two basic forms; (1) an attempt to bootstrap FSS spectrum utilization issues that are not related to LMDS/FSS sharing,^{4/} and (2) an attempt to carve out 28 GHz spectrum for use by dedicated fixed point-to-point service systems.^{5/} Video/Phone is also concerned by comments advocating the consideration of alternative spectrum utilization options in frequency bands other than the 28 GHz band.^{6/} Video/Phone addresses each of these three objectionable positions below.

A. Satellite Service Parties Should Not Be Permitted to Import Issues Unrelated to LMDS/FSS Sharing

Some of the commenting parties representing the interests of the satellite service industry suggest that the terms of reference of the LMDS NRM Committee be expanded to accommodate issues unrelated to LMDS/FSS sharing. Specifically, proposals

^{4/} See Comments of Loral Qualcomm Satellite Services, Inc., Comments of Constellation Communications, Inc., Comments of TRW, Inc., Comments of Ellipsat Corporation, and Comments of Motorola Satellite Communications, Inc.

^{5/} See Comments of Harris Corporation-Farion Division and Comments of Digital Microwave Corporation.

^{6/} See e.g., Comments of Motorola Satellite Communications, Inc., Comments of Harris Corporation-Farion Division.

are forwarded advocating consideration of low-Earth orbit ("LEO") mobile satellite service ("MSS") feederlink space-to-Earth operations in the 17.7-20.2 GHz band. Additionally, one party proposes to include in the LMDS NRM Committee's mandate consideration of issues relating to determining the electromagnetic compatibility of different types of 28 GHz satellite service systems.^{7/} Despite the fact that the above-mentioned satellite service matters may be grounded in legitimate concerns of the affected satellite service parties, it is abundantly clear that these issues would be more properly addressed in separate rulemaking proceedings.

The availability of spectrum for space-to-Earth LEO MSS feederlink operations is important, but has nothing to do with determining how LEO MSS Earth-to-space operations and LMDS operations can coexist in the 28 GHz band. Video/Phone maintains that this issue is properly within the terms of reference of the Commission rulemaking already underway in CC Docket No. 92-166, and, as such, should be dealt with in that proceeding.

Similarly, issues relating to the ability, or lack thereof of different proposed 28 GHz satellite service systems to coexist with one another have no place in the LMDS NRM proceedings. Questions as to whether different 28 GHz satellite systems can coexist on a co-primary co-channel basis are totally immaterial

^{7/} Comments of Motorola Satellite Communications, Inc., at Appendix 1.

to the consideration of possible solutions for co-primary LMDS/FSS use of the 28 GHz band. As already appropriately defined by the Commission, the focus of the LMDS NRM Committee should be on determining viable approaches for achieving co-primary compatibility between LMDS and FSS systems.^{8/} Inclusion of these unrelated issues could divert the focus of the Committee, and thus threaten to impede or totally preclude a successful outcome of the LMDS NRM process. For these reasons, the Commission should not permit the importation of extraneous satellite service issues into the terms of reference for the LMDS NRM Committee.^{9/}

C. Fixed Point-to-Point Service Requirements Can Be Accommodated In LMDS Systems

Two commentors, Harris Corporation-Farion Division ("Harris") and Digital Microwave Corporation ("DMC"), maintain that the Commission should expand the mandate of the LMDS NRM

^{8/} NRM Notice, at para. 6.

^{9/} In the unlikely event that the Commission does deem it necessary to include issues in the LMDS NRM process that are not related to LMDS/FSS sharing in the 28 GHz band, the Commission should prioritize the terms of reference and structure of the LMDS NRM Committee to place the central focus on the resolution of LMDS/FSS sharing issues. Through such use of separate working groups or other procedures, the Commission could minimize the risk that these other issues would prevent or delay the development of a consensus on the primary issue - - developing a viable approach to co-primary LMDS/FSS sharing in the 28 GHz band.

Committee to include a reexamination of the Commission's proposal in the First Notice of Proposed Rulemaking in the LMDS proceeding to redesignate the existing Fixed Service 28 GHz band allocation to permit the provision of LMDS. Harris and DMC maintain that a substantial portion of the 28 GHz band should be reserved for use by dedicated point-to-point fixed service operators. Harris also implies that the proposed redesignation of the 28 GHz band for LMDS is somehow incompatible with the International Table of Allocations.^{10/} These positions are totally without merit.

Contrary to the view espoused by Harris and DMC, the establishment of LMDS will not preclude the provision of point-to-point services in the 28 GHz band.^{11/} In fact, Video/Phone's LMDS system architecture is particularly well-suited to meeting traditional Fixed Service point-to-point service requirements on an interleaved basis with the various new LMDS offerings that will be provided. Advances in technology appear to have virtually eliminated the utility of separate dedicated 28 GHz point-to-point single-path microwave systems. For this reason, carving out 28 GHz spectrum for use by traditional dedicated

^{10/} Comments of Harris, at 7.

^{11/} Harris' is simply mistaken in implying that the Fixed Service point-to-multipoint utilization entailed in the Commission's proposed redesignation of the 28 GHz band is somehow incompatible with the current international Fixed Service 28 GHz band allocation. The Commission's proposed redesignation of the 28 GHz band for LMDS is clearly consistent with the International Table of Allocations.

point-to-point systems would be a wasteful approach to allotment of the public's scarce spectrum resource.

B. The Commission Is Correct In Concluding That LMDS Use of Alternative Spectrum Is Not Feasible

A limited number of the commenting parties recommend that the Commission expand the terms of reference of the LMDS NRM Committee to include consideration of utilizing spectrum outside of the 28 GHz band to meet currently proposed 28 GHz operational requirements. Video/Phone agrees with the Commission's conclusion in the Second Notice of Proposed Rulemaking in this proceeding that arguments attempting to justify the relocation of LMDS to spectrum outside of the 28 GHz band are without merit.^{12/} Furthermore, Video/Phone maintains that, if this issue is opened in the LMDS NRM Committee, there would be a substantially diminished incentive for the parties to negotiate in good faith to develop a viable co-primary LMDS/FSS sharing approach. Accordingly, at this time, Video/Phone is opposed to consideration of alternative spectrum allocation prospects.^{13/}

^{12/} See Second Notice of Proposed Rulemaking, CC Docket No. 92-27, FCC 94-12 (released February 11, 1994), at FN 15.

^{13/} See FN 9, *supra*. In the unlikely event that the LMDS NRM Committee is not successful in developing a co-primary sharing approach that accommodates all proposed 28 GHz LMDS and FSS requirements, it may be advantageous at that time to examine the availability of alternative spectrum. If any evaluation of alternative spectrum is undertaken, it should consider possible relocation of both proposed LMDS and FSS operations.

Conclusion

The unanimous endorsement by the parties commenting on the Commission's LMDS NRM Notice fully validates the Commission's finding that all threshold criteria for the establishment of the LMDS NRM Committee have been satisfied. Video/Phone urges the Commission to act expeditiously to establish the LMDS NRM Committee and looks forward to active participation in the LMDS NRM process. In forming the LMDS NRM Committee and finalizing its mandate, the Commission should disregard attempts by a certain limited number of parties to divert the focus of the Committee's work and/or expand the Committee's terms of reference to include matters that are not legitimately connected to the resolution of issues related to LMDS/FSS sharing of the 28 GHz band.

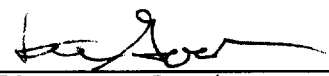
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